

**Introduced by Senator Liu**

February 7, 2013

---

An act to ~~add Section 60211 to~~ amend, repeal, and add Sections 313 and 60810 of, and to add Section 60211 to, the Education Code, relating to instructional materials.

LEGISLATIVE COUNSEL'S DIGEST

SB 201, as amended, Liu. Instructional materials: academic content standards: ~~language arts and English language development. English learners.~~

*(1) Existing law requires the Superintendent of Public Instruction to review existing tests that assess the English language development of pupils whose primary language is a language other than English, and requires that the tests include, but not be limited to, an assessment of the achievement of these pupils in English reading, speaking, and written skills, in accordance with specified criteria. Existing law requires each school district that has one or more pupils who are English learners, and, to the extent required by federal law, a county office of education and a charter school, to assess the English language development of each of those pupils in order to determine their level of proficiency. Existing law requires the State Department of Education, with the approval of the State Board of Education, to establish procedures for conducting the assessment and for the reclassification of a pupil from English learner to English proficient. Existing law requires a school district to annually conduct the assessment during a period that commences on the day upon which 55% of the instructional year is completed through July 1 of that calendar year.*

*This bill would apply the above requirements to initial and summative assessments and make conforming changes. The bill would require the Superintendent to determine which assessments, if any, meet specified requirements, and would require the assessments to be used for certain purposes. The bill would require the state board to approve assessment blueprints, assessment performance descriptors, and performance-level cut scores based on standard settings. The bill would require the Superintendent to report to the appropriate policy committees of the Legislature when the assessments are ready for their initial administration. The bill would make the above-described provisions of existing law inoperative when the Superintendent makes this report, and would repeal those provisions the following January 1. The bill, after the Superintendent reports to the appropriate policy committees of the Legislature, would require the summative assessment to be conducted annually during a 4-month period after January 1 determined by the Superintendent with the approval of the state board and the assessment for initial identification to be conducted upon the initial enrollment of a pupil.*

**Existing**

(2) Existing law requires the State Board of Education to adopt basic instructional materials for use in kindergarten and grades 1 to 8, inclusive, for governing boards, as specified. Existing law also requires the state board to adopt and approve academic content standards for language arts and for English language development for pupils whose primary language is a language other than English.

This bill would authorize the state board to adopt basic instructional materials for kindergarten and grades 1 to 8, inclusive, that are aligned to those standards for language arts and English language development by no later than November 30, 2015. The bill would, among other things, require the State Department of Education, before conducting an adoption of basic instructional materials for language arts and English language development, to provide notice, as specified, to all publishers or manufacturers that each publisher or manufacturer is required to pay a fee, as specified, to offset the cost of conducting the adoption process.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. (a) It is the intent of the Legislature, in enacting  
2 this act, to continue the implementation of the common core  
3 academic content standards by ensuring the adoption of  
4 instructional materials that are aligned to the common core  
5 academic content standards for language arts and by providing  
6 local educational agencies flexibility in their use of instructional  
7 materials.

8     (b) It is further the intent of the Legislature that this adoption  
9 of instructional materials will meet the needs of English learners  
10 by requiring alignment of the materials to the English language  
11 development standards adopted pursuant to Section 60811 of the  
12 Education Code.

13     (c) It is further the intent of the Legislature to ensure that school  
14 districts have access to as many high-quality standards-aligned  
15 instructional material options as possible, so that educators may  
16 have as many rigorous options in choosing the best instructional  
17 materials that meet the needs of all pupils, including English  
18 learners and pupils with disabilities, and that ensure that their  
19 pupils are able to master the academic content standards adopted  
20 by the State Board of Education pursuant to Section 60605.8 of  
21 the Education Code.

22     *SEC. 2. Section 313 of the Education Code is amended to read:*

23     313. (a) Each school district that has one or more pupils who  
24 are English learners, and, to the extent required by federal law,  
25 each county office of education and each charter-school school,  
26 shall assess the English language development of each pupil in  
27 order to determine the level of proficiency for purposes of this  
28 chapter.

29     (b) The department, with the approval of the state board, shall  
30 establish procedures for conducting the assessment required  
31 pursuant to subdivision (a) and for the reclassification of a pupil  
32 from English learner to English proficient.

33     (c) Commencing with the 2000–01 school year until subdivision  
34 (d) is implemented, the assessment shall be conducted upon initial  
35 enrollment, and annually, thereafter, during a period of time  
36 determined by the Superintendent and the state board. The annual  
37 assessments shall continue until the pupil is redesignated as English  
38 proficient. The assessment shall primarily utilize the English

1 language development test identified or developed by the  
2 Superintendent pursuant to Chapter 7 (commencing with Section  
3 60810) of Part 33 of Division 4 of Title 2.

4 (d) (1) This subdivision shall not be implemented unless and  
5 until the department receives written documentation from the  
6 United States Department of Education that federal law permits  
7 the implementation of the changes set forth in this subdivision or  
8 until the 2013–14 school year, whichever occurs later.

9 (2) The assessment shall be conducted annually during a period  
10 that commences on the day upon which 55 percent of the  
11 instructional year is completed through July 1 of that calendar  
12 year. Annual assessments shall continue until the pupil is  
13 redesignated as English proficient. The annual assessment shall  
14 primarily utilize the English language development test identified  
15 or developed by the Superintendent pursuant to Chapter 7  
16 (commencing with Section 60810) of Part 33 of Division 4 of Title  
17 2.

18 (3) The assessment shall be conducted upon the initial  
19 enrollment of a pupil in order to provide information to be used  
20 to determine if the pupil is an English learner.

21 (A) If the initial enrollment of a pupil occurs on a date outside  
22 of the testing period identified pursuant to paragraph~~(1)~~; (2), the  
23 prior year's annual assessment for the grade in which the pupil is  
24 enrolling shall be used for this purpose.

25 (B) If the initial enrollment of a pupil occurs on a date within  
26 the testing period identified pursuant to paragraph~~(1)~~; (2), the  
27 initial assessment of the pupil shall be conducted as part of the  
28 annual assessment conducted pursuant to paragraph~~(1)~~; (2).

29 (4) Notwithstanding paragraph~~(1)~~; (2), a school district shall  
30 assess the English language development of a pupil pursuant to  
31 this section no more than one time per school year.

32 (e) The assessments conducted pursuant to subdivision (d) shall  
33 be conducted in a manner consistent with federal statutes and  
34 regulations.

35 (f) The reclassification procedures developed by the department  
36 shall utilize multiple criteria in determining whether to reclassify  
37 a pupil as proficient in English, including, but not limited to, all  
38 of the following:

39 (1) Assessment of language proficiency using an objective  
40 assessment instrument, including, but not limited to, the English

1 language development test that is developed or acquired pursuant  
2 to Section 60810.

3 (2) Teacher evaluation, including, but not limited to, a review  
4 of the pupil's curriculum mastery.

5 (3) Parental opinion and consultation.

6 (4) Comparison of the performance of the pupil in basic skills  
7 against an empirically established range of performance in basic  
8 skills based upon the performance of English proficient pupils of  
9 the same age, that demonstrates whether the pupil is sufficiently  
10 proficient in English to participate effectively in a curriculum  
11 designed for pupils of the same age whose native language is  
12 English.

13 (g) This section does not preclude a school district or county  
14 office of education from testing English learners more than once  
15 in a school year if the school district or county office of education  
16 chooses to do so.

17 (h) *This section shall remain in effect only until the*  
18 *Superintendent reports to the appropriate policy committees of*  
19 *the Legislature pursuant to paragraph (2) of subdivision (h) of*  
20 *Section 60810 as added by the chapter that added this subdivision*  
21 *during the 2013–14 Regular Session, and as of January 1 of the*  
22 *following year, this section is repealed.*

23 SEC. 3. Section 313 is added to the Education Code, to read:

24 313. (a) *Each school district that has one or more pupils who*  
25 *are English learners, and, to the extent required by federal law,*  
26 *each county office of education and each charter school, shall*  
27 *assess the English language development of each pupil in order*  
28 *to determine the level of proficiency for purposes of this chapter.*

29 (b) *The department, with the approval of the state board, shall*  
30 *establish procedures for conducting the assessment required*  
31 *pursuant to subdivision (a) and for the reclassification of a pupil*  
32 *from English learner to English proficient.*

33 (c) *Commencing with the 2000–01 school year until subdivision*  
34 *(d) is implemented, the assessment shall be conducted upon initial*  
35 *enrollment, and annually, thereafter, during a period of time*  
36 *determined by the Superintendent and the state board. The annual*  
37 *assessments shall continue until the pupil is redesignated as*  
38 *English proficient. The assessment shall primarily utilize the*  
39 *English language development test identified or developed by the*

1 *Superintendent pursuant to Chapter 7 (commencing with Section*  
2 *60810) of Part 33 of Division 4 of Title 2.*

3 *(d) (1) This subdivision shall not be implemented unless and*  
4 *until the department receives written documentation from the*  
5 *United States Department of Education that federal law permits*  
6 *the implementation of the changes set forth in this subdivision or*  
7 *until the 2013–14 school year, whichever occurs later.*

8 *(2) The summative assessment shall be conducted annually*  
9 *during a four-month period after January 1 determined by the*  
10 *Superintendent with the approval of the state board. Annual*  
11 *assessments shall continue until the pupil is redesignated as*  
12 *English proficient. The annual assessment shall primarily utilize*  
13 *the English language development assessment identified or*  
14 *developed by the Superintendent pursuant to Chapter 7*  
15 *(commencing with Section 60810) of Part 33 of Division 4 of Title*  
16 *2.*

17 *(3) The assessment for initial identification shall be conducted*  
18 *upon the initial enrollment of a pupil in order to provide*  
19 *information to be used to determine if the pupil is an English*  
20 *learner.*

21 *(A) If the initial enrollment of a pupil occurs on a date outside*  
22 *of the testing period identified pursuant to paragraph (2), the prior*  
23 *year's annual assessment for the grade in which the pupil is*  
24 *enrolling shall be used for this purpose.*

25 *(B) If the initial enrollment of a pupil occurs on a date within*  
26 *the testing period identified pursuant to paragraph (2), the initial*  
27 *assessment of the pupil shall be conducted as part of the annual*  
28 *assessment conducted pursuant to paragraph (2).*

29 *(4) Notwithstanding paragraph (2), a school district shall assess*  
30 *the English language development of a pupil pursuant to this*  
31 *section no more than one time per school year for each assessment*  
32 *purpose pursuant to Chapter 7 (commencing with Section 60810)*  
33 *of Part 33 of Division 4 of Title 2.*

34 *(e) The assessments conducted pursuant to subdivision (d) shall*  
35 *be conducted in a manner consistent with federal statutes and*  
36 *regulations.*

37 *(f) The reclassification procedures developed by the department*  
38 *shall utilize multiple criteria in determining whether to reclassify*  
39 *a pupil as proficient in English, including, but not limited to, all*  
40 *of the following:*

1     (1) *Assessment of language proficiency using an objective*  
2     *assessment instrument, including, but not limited to, the English*  
3     *language development test that is developed or acquired pursuant*  
4     *to Section 60810.*

5     (2) *Teacher evaluation, including, but not limited to, a review*  
6     *of the pupil's curriculum mastery.*

7     (3) *Parental opinion and consultation.*

8     (4) *Comparison of the performance of the pupil in basic skills*  
9     *against an empirically established range of performance in basic*  
10    *skills based upon the performance of English proficient pupils of*  
11    *the same age, that demonstrates whether the pupil is sufficiently*  
12    *proficient in English to participate effectively in a curriculum*  
13    *designed for pupils of the same age whose native language is*  
14    *English.*

15    (g) *This section does not preclude a school district or county*  
16    *office of education from testing English learners more than once*  
17    *in a school year if the school district or county office of education*  
18    *chooses to do so.*

19    (h) *This section shall become operative when the Superintendent*  
20    *reports to the appropriate policy committees of the Legislature*  
21    *pursuant to paragraph (2) of subdivision (h) of Section 60810 as*  
22    *added by the chapter that added this subdivision during the*  
23    *2013–14 Regular Session.*

24    ~~SEC. 2.~~

25    SEC. 4. Section 60211 is added to the Education Code, to read:

26    60211. (a) Notwithstanding subdivision (a) of Section 60200  
27    and Section 60200.7, the state board may adopt basic instructional  
28    materials for kindergarten and grades 1 to 8, inclusive, that are  
29    aligned to the language arts content standards adopted pursuant to  
30    Section 60605.8 and the English language development standards  
31    adopted pursuant to Section 60811 by no later than November 30,  
32    2015.

33    (b) For purposes of conducting an adoption of basic instructional  
34    materials pursuant to subdivision (a), all of the following shall  
35    apply:

36    (1) (A) The department shall provide notice, pursuant to  
37    subparagraph (B), to all publishers or manufacturers known to  
38    produce basic instructional materials in language arts and English  
39    language development, post an appropriate notice on its Internet  
40    Web site, and take other reasonable measures to ensure that

1 appropriate notice is widely circulated to potentially interested  
2 publishers and manufacturers.

3 (B) The notice provided pursuant to subparagraph (A) shall  
4 specify that each publisher or manufacturer choosing to participate  
5 in the adoption shall be assessed a fee based on the number of  
6 programs the publisher or manufacturer indicates will be submitted  
7 for review and the number of grade levels proposed to be covered  
8 by each program.

9 (2) The department, before incurring substantial costs for the  
10 adoption, shall require that a publisher or manufacturer that wishes  
11 to participate in the adoption first declare the intent to submit one  
12 or more specific programs for adoption and specify the specific  
13 grade levels to be covered by each program.

14 (3) After a publisher or manufacturer has declared the intent to  
15 submit one or more programs and the grade levels to be covered  
16 by each program, the department shall assess a fee that shall be  
17 payable by the publisher or manufacturer even if the publisher or  
18 manufacturer subsequently chooses to withdraw a program or  
19 reduce the number of grade levels covered.

20 (4) The fee assessed pursuant to paragraph (3) shall be in an  
21 amount that does not exceed the reasonable costs to the department  
22 in conducting the adoption process. The department shall take  
23 reasonable steps to limit costs of the adoption and to keep the fee  
24 modest.

25 (5) A submission by a publisher or manufacturer shall not be  
26 reviewed for purposes of adoption until the fee assessed pursuant  
27 to paragraph (3) has been paid in full.

28 (6) (A) Upon the request of a small publisher or small  
29 manufacturer, the state board may reduce the fee for ~~participation~~  
30 *participating* in the adoption.

31 (B) For purposes of this section, “small publisher” and “small  
32 manufacturer” mean an independently owned or operated publisher  
33 or manufacturer that is not dominant in its field of operation and  
34 that, together with its affiliates, has 100 or fewer employees, and  
35 has average annual gross receipts of ten million dollars  
36 (\$10,000,000) or less over the previous three years.

37 (7) If the department determines that there is little or no interest  
38 in participating in an adoption by publishers and manufacturers,  
39 the department shall recommend to the state board whether or not

1 the adoption shall be conducted, and the state board may choose  
2 not to conduct the adoption.

3 (8) Revenue derived from fees assessed pursuant to paragraph  
4 (3) shall be budgeted as reimbursements and subject to review  
5 through the annual budget process, and may be used to pay for  
6 costs associated with any adoption and for any costs associated  
7 with the review of instructional materials, including reimbursement  
8 of substitute costs for teacher reviewers and may be used to cover  
9 stipends for content review experts.

10 *SEC. 5. Section 60810 of the Education Code is amended to*  
11 *read:*

12 60810. (a) (1) The Superintendent shall review existing tests  
13 that assess the English language development of pupils whose  
14 primary language is a language other than English. The tests shall  
15 include, but not be limited to, an assessment of achievement of  
16 these pupils in English reading, speaking, and written skills. The  
17 Superintendent shall determine which tests, if any, meet the  
18 requirements of subdivisions (b) and (c). If any existing test or  
19 series of tests meets these criteria, the Superintendent, with  
20 approval of the state board, shall report to the Legislature on its  
21 findings and recommendations.

22 (2) If no suitable test exists, the Superintendent shall explore  
23 the option of a collaborative effort with other states to develop a  
24 test or series of tests and share test development costs. If no suitable  
25 test exists, the Superintendent, with approval of the state board,  
26 may contract to develop a test or series of tests that meets the  
27 criteria of subdivisions (b) and (c) or may contract to modify an  
28 existing test or series of tests so that it will meet the requirements  
29 of subdivisions (b) and (c).

30 (3) The Superintendent and the state board shall release a request  
31 for proposals for the development of the test or series of tests  
32 required by this subdivision. The state board shall select a  
33 contractor or contractors for the development of the test or series  
34 of tests required by this subdivision, to be available for  
35 administration during the 2000–01 school year.

36 (4) The Superintendent shall apportion funds appropriated to  
37 enable school districts to meet the requirements of subdivision (d).  
38 The state board shall establish the amount of funding to be  
39 apportioned per test administered, based on a review of the cost  
40 per test.

(5) An adjustment to the amount of funding to be apportioned per test is not valid without the approval of the Director of Finance. A request for approval of an adjustment to the amount of funding to be apportioned per test shall be submitted in writing to the Director of Finance and the chairpersons of the fiscal committees of both houses of the Legislature with accompanying material justifying the proposed adjustment. The Director of Finance is authorized to approve only those adjustments related to activities required by statute. The Director of Finance shall approve or disapprove the amount within 30 days of receipt of the request and shall notify the chairpersons of the fiscal committees of both houses of the Legislature of the decision.

(b) (1) The test or series of tests developed or acquired pursuant to subdivision (a) shall have sufficient range to assess pupils in grades 2 to 12, inclusive, in English listening, speaking, reading, and writing skills. Pupils in kindergarten and grade 1 shall be assessed in English listening and speaking, and, once an assessment is developed, early literacy skills. ~~The early literacy assessment shall be administered for a period of four years beginning after the initial administration of the assessment or until July 1, 2014, whichever occurs first.~~ Six months after the three administered assessments are collected, but no later than June 30, 2013, the department shall report to the Legislature on the administration of the kindergarten and grade 1 early literacy assessment results, as well as on the administrative process, in order to determine whether reauthorization of the early literacy assessment is appropriate.

(2) In the development and administration of the assessment for pupils in kindergarten and grade 1, the department shall minimize any additional assessment time, to the extent possible. To the extent that it is technically possible, items that are used to assess listening and speaking shall be used to measure early literacy skills. The department shall ensure that the test and procedures for its administration are age and developmentally appropriate. Age and developmentally appropriate procedures for administration may include, but are not limited to, one-on-one administration, a small group setting, and orally responding or circling a response to a question.

(c) The test or series of tests shall meet all of the following requirements:

1 (1) Provide sufficient information about pupils at each grade  
2 level to determine levels of proficiency ranging from no English  
3 proficiency to fluent English proficiency with at least two  
4 intermediate levels.

5 (2) Have psychometric properties of reliability and validity  
6 deemed adequate by technical experts.

7 (3) Be capable of administration to pupils with any primary  
8 language other than English.

9 (4) Be capable of administration by classroom teachers.

10 (5) Yield scores that allow comparison of the growth of a pupil  
11 over time, can be tied to readiness for various instructional options,  
12 and can be aggregated for use in the evaluation of program  
13 effectiveness.

14 (6) Not discriminate on the basis of race, ethnicity, or gender.

15 (7) Be aligned with the standards for English language  
16 development adopted by the state board pursuant to Section 60811.

17 (8) Be age and developmentally appropriate for pupils.

18 (d) The test shall be used for the following purposes:

19 (1) To identify pupils who are limited English proficient.

20 (2) To determine the level of English language proficiency of  
21 pupils who are limited English proficient.

22 (3) To assess the progress of limited-English-proficient pupils  
23 in acquiring the skills of listening, reading, speaking, and writing  
24 in English.

25 (e) (1) A pupil in any of grades 3 to 12, inclusive, shall not be  
26 required to retake those portions of the test that measure English  
27 language skills for which he or she has previously tested as  
28 advanced within each appropriate grade span, as determined by  
29 the department in accordance with paragraph (8) of subdivision  
30 (c).

31 (2) Notwithstanding paragraph (1), a pupil in any of grades 10  
32 to 12, inclusive, shall not be required to retake those portions of  
33 the test that measure English language skills for which he or she  
34 has previously tested as early advanced or advanced.

35 (3) This subdivision shall not be implemented until the test  
36 publisher's contract that is in effect on January 1, 2012, expires.

37 (4) This subdivision shall not be implemented unless and until  
38 the department receives written documentation from the United  
39 States Department of Education that implementation is permitted  
40 by federal law.

1 (f) *This section shall remain in effect only until the*  
2 *Superintendent reports to the appropriate policy committees of*  
3 *the Legislature pursuant to paragraph (2) of subdivision (h) of*  
4 *Section 60810 as added by the chapter that added this subdivision*  
5 *during the 2013–14 Regular Session, and as of January 1 of the*  
6 *following year, this section is repealed.*

7 SEC. 6. *Section 60810 is added to the Education Code, to read:*

8 60810. (a) (1) *The Superintendent shall review existing*  
9 *assessments that assess the English language development of pupils*  
10 *whose primary language is a language other than English. The*  
11 *assessment for initial identification and the summative assessment*  
12 *shall include, but not be limited to, an assessment of achievement*  
13 *of these pupils in English reading, speaking, and written skills.*  
14 *The Superintendent shall determine which assessments, if any,*  
15 *meet the requirements of subdivisions (b) to (f), inclusive. If any*  
16 *existing assessment or series of assessments meets these criteria,*  
17 *the Superintendent, with approval of the state board, shall report*  
18 *to the Legislature on its findings and recommendations.*

19 (2) *If no suitable assessment exists, the Superintendent shall*  
20 *explore the option of a collaborative effort with other states to*  
21 *develop an assessment or series of assessments and share*  
22 *assessment development costs. If no suitable assessment exists,*  
23 *the Superintendent, with the approval of the state board, shall*  
24 *either release a request for proposals for the development of an*  
25 *assessment or series of assessments that meets the criteria of*  
26 *subdivisions (b) to (f), inclusive, or contract to modify an existing*  
27 *assessment or series of assessments so that it will meet the*  
28 *requirements of subdivisions (b) to (f), inclusive. The state board*  
29 *shall approve assessment blueprints, assessment performance*  
30 *descriptors, and performance-level cut scores based on standard*  
31 *settings.*

32 (3) *The Superintendent shall apportion funds appropriated to*  
33 *enable school districts to meet the requirements of subdivisions*  
34 *(c) and (d). The state board shall establish the amount of funding*  
35 *to be apportioned per assessment administered, based on a review*  
36 *of the cost per assessment for initial identification and summative*  
37 *assessment purposes.*

38 (4) *An adjustment to the amount of funding to be apportioned*  
39 *per assessment is not valid without the approval of the Director*  
40 *of Finance. A request for approval of an adjustment to the amount*

1 of funding to be apportioned per assessment shall be submitted in  
2 writing to the Director of Finance and the chairpersons of the  
3 fiscal committees of both houses of the Legislature with  
4 accompanying material justifying the proposed adjustment. The  
5 Director of Finance is authorized to approve only those  
6 adjustments related to activities required by statute. The Director  
7 of Finance shall approve or disapprove the amount within 30 days  
8 of receipt of the request and shall notify the chairpersons of the  
9 fiscal committees of both houses of the Legislature of the decision.

10 (b) (1) The assessment or series of assessments developed or  
11 acquired pursuant to subdivision (a) shall have sufficient range  
12 to assess pupils in grades 2 to 12, inclusive, in English listening,  
13 speaking, reading, and writing skills. Pupils in kindergarten and  
14 grade 1 shall be assessed in English listening and speaking, and,  
15 once an assessment is developed, early literacy skills. Six months  
16 after the results of three administrations are collected, but no later  
17 than June 30, 2013, the department shall report to the Legislature  
18 on the administration of the kindergarten and grade 1 early literacy  
19 assessment results, as well as on the administrative process, in  
20 order to determine whether reauthorization of the early literacy  
21 assessment is appropriate.

22 (2) In the development and administration of the assessment  
23 for pupils in kindergarten and grade 1, the department shall  
24 minimize any additional assessment time, to the extent possible.  
25 To the extent that it is technically possible, items that are used to  
26 assess listening and speaking shall be used to measure early  
27 literacy skills. The department shall ensure that the assessment  
28 and procedures for its administration are age and developmentally  
29 appropriate. Age and developmentally appropriate procedures for  
30 administration may include, but are not limited to, one-on-one  
31 administration, a small group setting, and orally responding or  
32 circling a response to a question.

33 (3) The assessment for initial identification developed or  
34 acquired pursuant to subdivision (a) shall have sufficient range  
35 to identify if the pupil is an English learner, as defined by Section  
36 306.

37 (c) The assessment for initial identification shall meet all of the  
38 following requirements:

39 (1) Have psychometric properties of reliability and validity  
40 deemed adequate by technical experts.

- 1     (2) *Be capable of administration to pupils with any primary*  
2 *language other than English.*
- 3     (3) *Be capable of administration by classroom teachers.*
- 4     (4) *Not discriminate on the basis of race, ethnicity, or gender.*
- 5     (5) *Be aligned with the standards for English language*  
6 *development adopted by the state board pursuant to Section*  
7 *60811.3.*
- 8     (6) *Be age and developmentally appropriate for pupils.*
- 9     (d) *The assessment for initial identification shall be used to*  
10 *identify pupils who are limited English proficient.*
- 11     (e) *The summative assessment shall meet all of the following*  
12 *requirements:*
- 13         (1) *Provide sufficient information about pupils at each grade*  
14 *level to determine levels of proficiency ranging from no English*  
15 *proficiency to fluent English proficiency with at least two*  
16 *intermediate levels.*
- 17         (2) *Yield scores that allow comparison of the growth of a pupil*  
18 *over time, that may be tied to readiness for various instructional*  
19 *options, and that may be aggregated for use in the evaluation of*  
20 *program effectiveness.*
- 21         (3) *Have psychometric properties of reliability and validity*  
22 *deemed adequate by technical experts.*
- 23         (4) *Be capable of administration to pupils with any primary*  
24 *language other than English.*
- 25         (5) *Be capable of administration by classroom teachers.*
- 26         (6) *Not discriminate on the basis of race, ethnicity, or gender.*
- 27         (7) *Be aligned with the standards for English language*  
28 *development adopted by the state board pursuant to Section*  
29 *60811.3.*
- 30         (8) *Be age and developmentally appropriate for pupils.*
- 31     (f) *The summative assessment shall be used for both of the*  
32 *following purposes:*
- 33         (1) *To identify the level of English language proficiency of pupils*  
34 *who are limited English proficient.*
- 35         (2) *To assess the progress of limited-English-proficient pupils*  
36 *in acquiring the skills of listening, reading, speaking, and writing*  
37 *in English.*
- 38     (g) (1) *A pupil in any of grades 3 to 12, inclusive, shall not be*  
39 *required to retake those portions of the assessment that measure*  
40 *English language skills for which he or she has previously tested*

1 *as advanced within each appropriate grade span, as determined*  
2 *by the department in accordance with paragraph (8) of subdivision*  
3 *(e).*

4 *(2) Notwithstanding paragraph (1), a pupil in any of grades 10*  
5 *to 12, inclusive, shall not be required to retake those portions of*  
6 *the assessment that measure English language skills for which he*  
7 *or she has previously tested as early advanced or advanced.*

8 *(3) This subdivision shall not be implemented unless and until*  
9 *the department receives written documentation from the United*  
10 *States Department of Education that implementation is permitted*  
11 *by federal law.*

12 *(h) The Superintendent shall report to the appropriate policy*  
13 *committees of the Legislature when the assessments are ready for*  
14 *their initial administration.*